IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3249 OF 2006

In

SUIT NO.1512 OF 2001

M/s.Oil and Natural Gas Corporation Ltd.
& Anr. : Plaintiffs

V/s.

M/s.Shipping Corporation of India Ltd. : Defendants

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Mr.Rahul Narichania with Mr.Kunal Shah i/b. M/s.Bhatt & Saldanha for the defendants in support.

Mr.S.R.Shetty i/b. V.S.Amin & Co., for the plaintiffs to show cause.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 14, 2007.

ORAL ORDER:

1. This is the defendants' Notice of Motion. The defendants seek a stay of this Suit no.1512 of 2001 filed by the Oil and Natural Gas Corporation and the New India Assurance company Limited under section 352C of the Merchant Shipping Act, 1958.

2. The plaintiff no.1, Oil and Natural Gas Corporation

Limited, had some cargo on a vessel owned by Shipping Corporation of India Ltd i.e. the defendants. That cargo was lost in an occurrence. The Oil and Natural Gas Corporation Ltd. and the insurers, the New India Assurance Company Ltd. have sued Shipping Corporation of India Ltd. in this suit i.e. Suit no.1512 of 2001 for a sum of Rs.28,40,016/- towards compensation for the loss suffered by them.

3. By this Notice of Motion, the defendants, Shipping Corporation of India Ltd. seek stay of the suit under section 352C of the Merchant Shipping Act, 1958. That section reads as follows:-

> **"352C. Limitation fund and consolidation of claims against owners**.-- (1) Where any liability is alleged to have been incurred by the owner of a vessel in respect of claims arising out of an occurrence and the aggregate of the claims exceeds or is likely to exceed the limits of liability of the owner under section 352B, then the owner may apply to the High Court for the setting up of a limitation fund for the total sum representing such limits of liability.

(2) The High Court to which the application is made under sub-section (1) may determine the amount of the owner's liability and require him to deposit such amount with the High Court or furnish such security in respect of the amount as in the opinion of the High Court is satisfactory and the amount so deposited or secured shall constitute a limitation fund for the purposes of the claims referred to in sub-section (1) and shall be utilised only for the payment of such claims.

(3) After the fund has been constituted, no person entitled to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the fund, if that fund is actually available for the benefit of the claimant.

(4) Subject to the provisions of this Part, the High Court may distribute the amount constituting the fund rateably amongst the several claimants and may stay any proceedings pending in any other court in

relation to the same matter and may proceed in such manner and subject to such rules of the High Court as to making persons interested parties to the proceedings, and as to the exclusion of any claims which do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the High Court thinks fit.

(5) Where the owner establishes that he has paid in whole or in part any claim in respect of which he can limit his liability under section 352A, the High Court shall place him in the same position and to the same extent in relation to the fund as the claimant whose claim he has paid.

(6) Where the owner has established that he may at a later date be required to pay in whole or in part, any of the claims under this Part, which could be settled from the fund, the High Court may notwithstanding the foregoing provisions of this section order that a sufficient sum may be provisionally set aside for the purpose to enable the owner

to enforce his claim against the fund at a later date in accordance with the provisions of sub-section (4).

(7) If the owner is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Part shall only apply to the balance, if any."

Broadly, the scheme of section 352C is that where the owner of the vessel incurs liability in respect of an occurrence, then it may apply to the High Court for the setting up of a limitation fund where the liability in respect of claims and the aggregate of claim exceeds or is likely to exceed the limits of the liability of the owner under section 352B. Section 352B sets out the limit of liability of an owner of a vessel. The High Court may, after determining the amount of liability set up such a fund and ask the owner to deposit such amount or give security as may appear appropriate. Sub-section (3) provides that a person is not entitled to exercise any right against any other assets of the owner in respect of his claim "if that fund is actually available for the benefit of the claimant". This is obviously

intended to prevent multiplicity of proceedings and a unified determination of all claims against the owner in respect of the same occurrence. The rest of the provisions are not strictly relevant.

4. Now in this case, the suit filed by Oil and Natural Gas Corporation Ltd. and the New India Assurance Company Limited has been pending since 18.4.2001 in respect of the claim. Thereafter, Shipping Corporation of India Ltd. applied to set up a limitation fund in Admiralty Suit No.19 of 2001. This Court set up the fund in accordance with section 352C with effect from 27.10.2004 by judgement and order dated 30.6.2004. The suit was disposed of on that date. The fund was in existence from 27.10.2004 i.e. the date with effect from which it was set up till 12.2.2007 when all the remaining monies in the fund were withdrawn by Shipping Corporation of India Ltd., after certain claims were satisfied. Thus, the fund went out of existence on 12.2.2007.

5. It is noteworthy that Shipping Corporation of India Ltd. had joined Oil and Natural Gas Corporation Ltd. as a party to the limitation proceedings i.e. Suit no.19 of 2001. Admittedly, since the cargo was insured, the Oil and Natural Gas Corporation Ltd. received the sum assured from the plaintiff no.2 i.e. the New India

Assurance Company Ltd. and, therefore, did not make any claim in the limitation proceedings under section 358C.

6. Mr.Narichania, the learned counsel for the defendants, Shipping Corporation of India Ltd., who has taken out this Notice of Motion, submitted that the plaintiffs are not entitled to proceed with this suit since they applied for intervention in the limitation proceedings and their intervention application by way of Chamber Summons no.1373 of 2006 was dismissed by the Court on 15.11.2006. There is no merit in this contention. In the first place, the Chamber Summons was taken out only by the New India Assurance Company Limited i.e. the 2nd plaintiff who was admittedly not a party to the limitation proceedings. The learned single Judge of this Court dismissed the Chamber Summons and declined permission to intervene as is apparent from the order dated 15.11.2006. Thus, there was no adjudication whatsoever of the claim by New India Assurance Company Ltd. in the present suit.

7. Apart from the above, the main ground on which Shipping Corporation of India seeks a stay of the suit is the fact that they had applied for the establishment of a limitation fund for consolidation of claims against the owners which had been granted by this Court. That alone,

according to the defendants, disentitles the plaintiffs to continue the suit and entitles the defendants to a stay of the suit. These rights are claimed by the defendants as flowing from sub-section (3) of section 352C which reads as follows:-

> "(3) After the fund has been constituted, no person entitled to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the fund, if that fund is actually available for the benefit of the claimant."

The defendants' contention cannot be accepted in the circumstances of this case. Indeed, this contention would have been acceptable if the limitation fund constituted by this Court was available for the benefit of the claimants i.e. the Oil and Natural Gas Corporation Ltd. and the New India Assurance Company Ltd. This is the intent and purpose of sub-section (3) which provides that no person entitled to make a claim shall exercise any right against other assets of the owner in respect of his claim against the fund "if that fund is actually available for the benefit of the claimant". Admittedly, in this case, the fund is not

available after 12.2.2007 when the defendants i.e. the Shipping Corporation of India withdrew the balance remaining in the fund after certain claims of others were satisfied. There is no doubt that Parliament intended that the limitation fund should be set up in order to enable all persons to make a claim against the owner to make a claim against the fund and not against any other assets of the owner. In fact, sub-section (4) of section 352C empowers the High Court to stay proceedings in any other Court in relation to same matter. However, the intention is clear that other proceedings and other claims may not continue only where the fund is actually available for the benefit of the claimant. It is obvious, therefore, that if the fund is not available, a claimant must be considered entitled to continue his suit. It is noteworthy that the entire part XA which deals with limitation of liability does not contain any provision which automatically terminates all legal proceedings in which claim is made against an owner of a vessel in respect of claim arising out of an occurrence.

8. In this view of the matter, I am of view that the present Suit no.1512 of 2001 filed by Oil and Natural Gas Corporation Ltd. as the plaintiff no.1 and the New India Assurance Company Ltd. as the plaintiff no.2 ought to continue and is not liable to be stayed as prayed for by

the defendants.

9. The Notice of Motion is, therefore, dismissed.

S.A. BOBDE, J.